Synopsis of the one criminal opinion by the Mississippi Supreme Court on June 19, 2008.

Moore v. State, No. 2005-CT-02063-SCT (Miss. June 19, 2008)
[COA opinion from April 17, 2007 granting evidentiary hearing reversed]

CRIME: PCR – Possession of a Firearm by a Convicted Felon
DECISION: COA reversed, denial of PCR affirmed
COUNTY: Lauderdale
MAJORITY: Carlson
DISSENT: Dickinson, joined by Diaz
DISSENT: Graves without separate opinion

FACTS: Fredrick Moore pled guilty to possession of a firearm by a convicted felon, and was sentenced to 2 years to serve, and 1 year and 364 days suspended, and 1 year PRS. On June 4, 2004, Moore was pulled over by a police officer for a broken taillight. The officer witnessed Moore bending down toward the driver's seat several times. Underneath the seat, the officer found a burnt marijuana cigarette, which was still hot, and a handgun attached to a spring mechanism. At the time, Moore was on probation for a previous conviction for sale of cocaine. His probation was revoked, and he was sentenced to serve 15 years in prison. Moore pled guilty to being a felon in possession of a firearm. He maintained his innocence but said he pled guilty because he felt there was a strong probability of conviction if he went to trial. Moore subsequently filed a PCR alleging ineffective assistance and no factual basis to support the plea. His petition was dismissed without an evidentiary hearing. He appealed. The COA held that although the *Alford* plea was valid, Moore made a prima facie showing that he was denied effective assistance of counsel and should have been granted an evidentiary hearing, based on the fact that Moore was stopped for one broken taillight. Since it is not illegal to drive with only one taillight, the stop was without probable cause. The COA held Moore made a showing that his attorney was deficient for recommending the plea instead of filing a motion to suppress. The Supreme Court granted the State's request for certiorari.

HELD: The COA's opinion is in direct conflict with *Harrison v. State*, 800 So.2d 1134 (Miss. 2001), which held that a traffic stop based on a mistake of law is still valid. The officer had an objective, reasonable basis for believing Moore was in violation of the law. Probable cause existed, even though the officer's belief was a mistake of law. Had Moore gone to trial, the evidence would have been admissible. Therefore, counsel could not have been ineffective for not filing a suppression motion.

==>Since the COA reversed the case for an evidentiary hearing on ineffective assistance, the court failed to address two other issues. The trial judge did not err in imposing sanctions (forfeiture of 60 days of earned time) on the petitioner for filing a frivolous petition. There was also no cumulative error.

[Dickinson dissented, "....I agree with the majority that a reasonable, good-faith mistake as to the law may excuse that Fourth Amendment requirement. The only salient issue on which I disagree with

the majority is whether – under such circumstances – the officer is required to inform the court of the reasonable, good-faith basis for the mistake. Because the majority simply assumes – with absolutely no proof in the record – that the officer had a reasonable, good-faith basis for his mistake; and because I believe today's decision is a dangerous precedent which opens the door to unexplained, unlawful stops, I must respectfully dissent." He went on to assert there was nothing in the record to support the conclusion that the stop was based on good-faith. An evidentiary hearing should be held.]

To read the full opinion, click here:
http://www.mssc.state.ms.us/Images/Opinions/CO48703.pdf